

on any subsequent testing date that includes January 19, Year 2.

(4) *End of separate tracking of certain losses.* If § 1.1502-96T(a) (relating to the end of separate tracking of attributes) applies to a loss subgroup, then, while one or more members that were included in the loss subgroup remain members of the consolidated group, there is an ownership change with respect to their attributes described in § 1.1502-96T(a)(2) only if the consolidated group is a loss group and has an ownership change under paragraph (b)(1)(i) of this section (or such a member has an ownership change under § 1.1502-96T(b) (relating to ownership changes of subsidiaries)). If, however, the loss subgroup has had an ownership change before § 1.1502-96T(a) applies, see § 1.1502-96T(c) for the continuing application of the subgroup's section 382 limitation with respect to its pre-change subgroup attributes.

(c) *Supplemental rules for determining ownership change—(1) Scope.* This paragraph (c) contains a supplemental rule for determining whether there is an ownership change of a loss group (or loss subgroup). It applies in addition to, and not instead of, the rules of paragraph (b) of this section. Thus, for example, if the common parent of the loss group has an ownership change under paragraph (b) of this section, the loss group has an ownership change even if, by applying this paragraph (c), the common parent would not have an ownership change.

(2) *Cause for applying supplemental rule.* This paragraph (c) applies to a loss group (or loss subgroup) if—

(i) Any 5-percent shareholder of the common parent (or loss subgroup parent) increases its percentage ownership interest in the stock of both—

(A) A subsidiary of the loss group (or loss subgroup) other than by a direct or indirect acquisition of stock of the common parent (or loss subgroup parent); and

(B) The common parent (or loss subgroup parent); and

(ii) Those increases occur within a 3 year period ending on any day of a consolidated return year or, if shorter, the period beginning on the first day following the most recent ownership

change of the loss group (or loss subgroup).

(3) *Operating rules.* Solely for purposes of this paragraph (c)—

(i) A 5-percent shareholder of the common parent (or loss subgroup parent) is treated as increasing its percentage ownership interest in the common parent (or loss subgroup parent) or a subsidiary to the extent, if any, that any person acting pursuant to a plan or arrangement with the 5-percent shareholder increases its percentage ownership interest in the stock of that entity;

(ii) The rules in section 382(l)(3) and §§ 1.382-2T(h) and 1.382-4(d) (relating to constructive ownership) apply with respect to the stock of the subsidiary by treating such stock as stock of a loss corporation; and

(iii) In the case of a loss subgroup, a subsidiary includes any member of the loss subgroup other than the loss subgroup parent. (The loss subgroup parent is, however, a subsidiary of the loss group of which it is a member.)

(4) *Supplemental ownership change rules.* The determination whether the common parent (or loss subgroup parent) has an ownership change is made by applying paragraph (b)(1) of this section as modified by the following additional rules—

(i) *Additional testing dates for the common parent (or loss subgroup parent).* A testing date for the common parent (or loss subgroup parent) also includes—

(A) Each day on which there is an increase in the percentage ownership of stock of a subsidiary as described in paragraph (c)(2) of this section; and

(B) The first day of the first consolidated return year for which the group is a loss group (or the members compose a loss subgroup);

(ii) *Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent).* The common parent (or loss subgroup parent) is treated as though it had issued to the person acquiring (or deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person's ownership of the subsidiary (determined on a separate entity basis). A similar principle applies if the increase

in percentage ownership interest is effected by a redemption or similar transaction; and

(iii) *5-percent shareholder of the common parent (or loss subgroup parent)*. Any person described in paragraph (c)(3)(i) of this section who is acting pursuant to the plan or arrangement is treated as a 5-percent shareholder of the common parent (or loss subgroup parent).

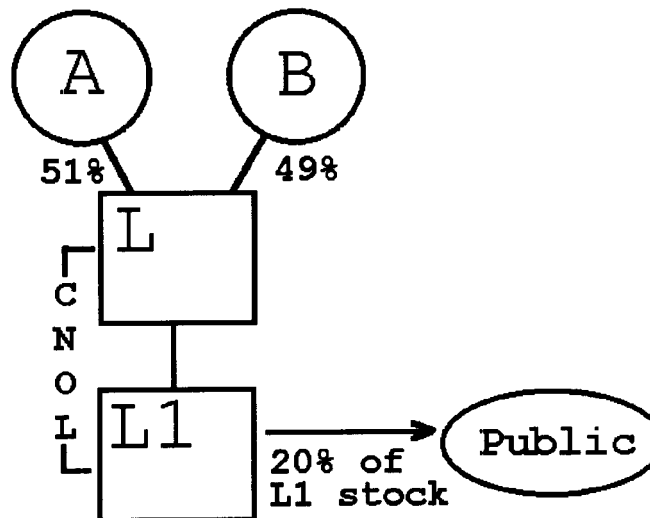
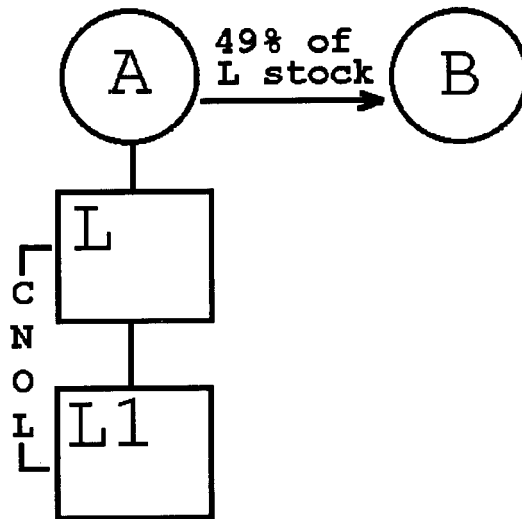
(5) *Examples*. The following examples illustrate the principles of this paragraph (c).

Example 1. Stock of the common parent under supplemental rules. (a) A owns all the L stock. L is not a member of an affiliated group and has a net operating loss carryover arising in Year 1 that is carried over to Year 6. On September 20, Year 6, L transfers all of its assets and liabilities to a newly created subsidiary, S, in exchange for S stock. L and S thereafter file consolidated returns. On November 23, Year 6, B contributes cash to L in exchange for a 45 percent ownership interest in

L and contributes cash to S for a 20 percent ownership interest in S.

(b) B is a 5-percent shareholder of L who increases his percentage ownership interest in L and S during the 3 year period ending on November 23, Year 6. Under paragraph (c)(4)(ii) of this section, the determination whether L (the common parent of a loss group) has an ownership change on November 23, Year 6 (or on any testing date in the testing period which includes November 23, Year 6), is made by applying paragraph (b)(1)(i) of this section and by treating the value of B's 20 percent ownership interest in S as if it were L stock issued to B.

Example 2. Plan or arrangement—public offering of subsidiary stock. (a) A owns all the stock of L and L owns all the stock of L1. The L group has a consolidated net operating loss arising in Year 1 that resulted from the operations of L1 and that is carried over to Year 2. As part of a plan, A sells 49 percent of the L stock to B on October 7, Year 2, and L1 issues new stock representing a 20 percent ownership interest in L1 to the public on November 6, Year 2. The following is a graphic illustration of these facts:



(b) A's sale of the L stock to B does not cause an ownership change of the L loss group on October 7, Year 2, under the rules of §1.382-2T and paragraph (b)(1)(i) of this section.

(c) Because the issuance of L1 stock to the public occurs in connection with B's acquisition of L stock pursuant to a plan, paragraph (c)(4) of this section applies to determine

whether the L loss group has an ownership change on November 6, Year 2 (or on any testing date for which the testing period includes November 6, Year 2).

(d) *Testing period following ownership change under this section.* If a loss group (or a loss subgroup) has had an ownership change under this section, the

testing period for determining a subsequent ownership change with respect to pre-change consolidated attributes (or pre-change subgroup attributes) begins no earlier than the first day following the loss group's (or loss subgroup's) most recent change date.

(e) *Information statements.*—(1) *Common parent of a loss group.* The common parent of a loss group must file the information statement required by § 1.382-2T(a)(2)(ii) for a consolidated return year because of any owner shift, equity structure shift, or the issuance or transfer of an option—

(i) With respect to the common parent and with respect to any subsidiary stock subject to paragraph (c) of this section; and

(ii) With respect to an ownership change described in § 1.1502-96T(b) (relating to ownership changes of subsidiaries).

(2) *Abbreviated statement with respect to loss subgroups.* The common parent of a consolidated group that has a loss subgroup during a consolidated return year must file the information statement required by § 1.382-2T(a)(2)(ii) because of any owner shift, equity structure shift, or issuance or transfer of an option with respect to the loss subgroup parent and with respect to any subsidiary stock subject to paragraph (c) of this section. Instead of filing a separate statement for each loss subgroup parent, the common parent (which is treated as a loss corporation) may file the single statement described in paragraph (e)(1) of this section. In addition to the information concerning stock ownership of the common parent, the single statement must identify each loss subgroup parent and state which loss subgroups, if any, have had ownership changes during the consolidated return year. The loss subgroup parent is, however, still required to maintain the records necessary to determine if the loss subgroup has an ownership change. This paragraph (e)(2) applies with respect to the attributes of a loss subgroup until, under § 1.1502-96T(a), the attributes are no longer treated as described in § 1.1502-91T(d) (relating to the definition of loss subgroup). After that time, the information statement described in para-

graph (e)(1) of this section must be filed with respect to those attributes.

[T.D. 8678, 61 FR 33341, June 27, 1996]

§ 1.1502-93T Consolidated section 382 limitation (or subgroup section 382 limitation) (temporary).

(a) *Determination of the consolidated section 382 limitation (or subgroup section 382 limitation)*—(1) *In general.* Following an ownership change, the consolidated section 382 limitation (or subgroup section 382 limitation) for any post-change year is an amount equal to the value of the loss group (or loss subgroup), as defined in paragraph (b) of this section, multiplied by the long-term tax-exempt rate that applies with respect to the ownership change, and adjusted as required by section 382 and the regulations thereunder. See, for example, section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(m)(2) (relating to short taxable years), and section 382(h) (relating to recognized built-in gains and section 338 gains).

(2) *Coordination with apportionment rule.* For special rules relating to apportionment of a consolidated section 382 limitation (or a subgroup section 382 limitation) when one or more corporations cease to be members of a loss group (or a loss subgroup) and to aggregation of amounts so apportioned, see § 1.1502-95T(c).

(b) *Value of the loss group (or loss subgroup)*—(1) *Stock value immediately before ownership change.* Subject to any adjustment under paragraph (b)(2) of this section, the value of the loss group (or loss subgroup) is the value, immediately before the ownership change, of the stock of each member, other than stock that is owned directly or indirectly by another member. For this purpose—

(i) Ownership is determined under § 1.382-2T;

(ii) A member is considered to indirectly own stock of another member through a nonmember only if the member has a 5-percent or greater ownership interest in the nonmember; and

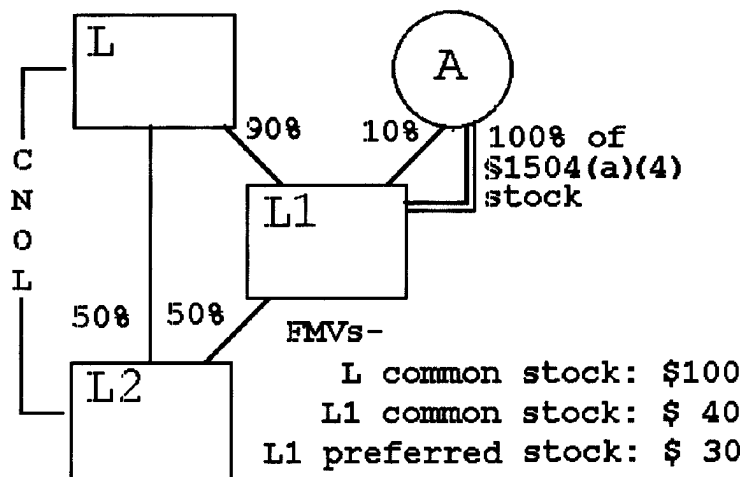
(iii) Stock includes stock described in section 1504(a)(4) and § 1.382-2T(f)(18)(ii) and (iii).

(2) *Adjustment to value.* The value of the loss group (or loss subgroup), as determined under paragraph (b)(1) of this section, is adjusted under any rule in section 382 or the regulations thereunder requiring an adjustment to such value for purposes of computing the amount of the section 382 limitation. See, for example, section 382(e)(2) (redemptions and corporate contractions), section 382(l)(1) (certain capital contributions) and section 382(l)(4) (ownership of substantial nonbusiness assets). The value of the loss group (or loss subgroup) determined under this paragraph (b) is also adjusted to the extent necessary to prevent any duplication of the value of the stock of a member. For example, the principles of § 1.382-8T (relating to controlled groups of corpora-

tions) apply in determining the value of a loss group (or loss subgroup) if, under § 1.1502-91T(g)(2), members are not included in the determination whether the group (or loss subgroup) has a net unrealized built-in loss.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b).

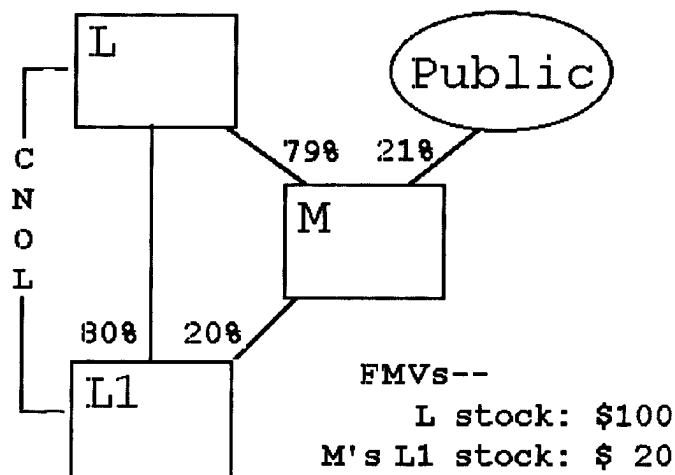
Example 1. Basic case. (a) L, L1, and L2 compose a loss group. L has outstanding common stock, the value of which is \$100. L1 has outstanding common stock and preferred stock that is described in section 1504(a)(4). L owns 90 percent of the L1 common stock, and A owns the remaining 10 percent of the L1 common stock plus all the preferred stock. The value of the L1 common stock is \$40, and the value of the L1 preferred stock is \$30. L2 has outstanding common stock, 50 percent of which is owned by L and 50 percent by L1. The L group has an ownership change. The following is a graphic illustration of these facts:



(b) Under paragraph (b)(1) of this section, the L group does not include the value of the stock of any member that is owned directly or indirectly by another member in computing its consolidated section 382 limitation. Accordingly, the value of the stock of the loss group is \$134, the sum of the value of—

- (1) The common stock of L (\$100);
- (2) the 10 percent of the L1 common stock (\$4) owned by A; and
- (3) The L1 preferred stock (\$30) owned by A.

Example 2. Indirect ownership. (a) L and L1 compose a consolidated group. L's stock has a value of \$100. L owns 80 shares (worth \$80) and corporation M owns 20 shares (worth \$20) of the L1 stock. L also owns 79 percent of the stock of corporation M. The L group has an ownership change. The following is a graphic illustration of these facts:



(b) Under paragraph (b)(1) of this section, because of L's more than 5 percent ownership interest in M, a nonmember, L is considered to indirectly own 15.8 shares of the L1 stock held by M (79% x 20 shares). The value of the L loss group is \$104.20, the sum of the values of—

- (1) The L stock (\$100); and
- (2) The L1 stock not owned directly or indirectly by L (21% x \$20, or \$4.20).

(c) *Recognized built-in gain of a loss group or loss subgroup.* If a loss group (or loss subgroup) has a net unrealized built-in gain, any recognized built-in gain of the loss group (or loss subgroup) is taken into account under section 382(h) in determining the consolidated section 382 limitation (or subgroup section 382 limitation).

(d) *Continuity of business—(1) In general.* A loss group (or a loss subgroup) is treated as a single entity for purposes of determining whether it satisfies the continuity of business enterprise requirement of section 382(c)(1).

(2) *Example.* The following example illustrates the principle of this paragraph (d).

Example. Continuity of business enterprise. L owns all the stock of two subsidiaries, L1 and L2. The L group has an ownership change. It has pre-change consolidated attributes attributable to L2. Each of the members has historically conducted a separate line of business. Each line of business is approximately equal in value. One year after the ownership change, L discontinues its separate business and the business of L2. The

separate business of L1 is continued for the remainder of the 2 year period following the ownership change. The continuity of business enterprise requirement of section 382(c)(1) is met even though the separate businesses of L and L2 are discontinued.

(e) *Limitations of losses under other rules.* If a section 382 limitation for a post-change year exceeds the consolidated taxable income that may be offset by pre-change attributes for any reason, including the application of the limitation of § 1.1502-21T(c), the amount of the excess is carried forward under section 382(b)(2) (relating to the carryforward of unused section 382 limitation).

[T.D. 8678, 61 FR 33351, June 27, 1996]

§ 1.1502-94T Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group (temporary).

(a) *Scope—(1) In general.* This section applies section 382 and the regulations thereunder to a corporation that is a new loss member of a consolidated group. A corporation is a new loss member if it—

(i) Carries over a net operating loss that arose (or is treated under § 1.1502-21T(c) as arising) in a SRLY with respect to the current group, and that is not described in § 1.1502-91T(d)(1); or

(ii) Has a net unrealized built-in loss (determined under paragraph (c) of this

section on the day it becomes a member of the current group by treating that day as a change date) that is not taken into account under § 1.1502-91T(d)(2) in determining whether two or more corporations compose a loss subgroup.

(2) *Successor corporation as new loss member.* A new loss member also includes any successor to a corporation that has a net operating loss carryover arising in a SRLY and that is treated as remaining in existence under § 1.382-2(a)(1)(ii) following a transaction described in section 381(a).

(3) *Coordination in the case of a loss subgroup.* For rules regarding the determination of whether there is an ownership change of a loss subgroup with respect to a net operating loss or a net unrealized built-in loss described in § 1.1502-91T(d) (relating to the definition of loss subgroup) and the computation of a subgroup section 382 limitation following such an ownership change, see §§ 1.1502-92T and 1.1502-93T.

(4) *End of separate tracking of certain losses.* If § 1.1502-96T(a) (relating to the end of separate tracking of attributes) applies to a new loss member, then, while that member remains a member of the consolidated group, there is an ownership change with respect to its attributes described in § 1.1502-96T(a)(2) only if the consolidated group is a loss group and has an ownership change under § 1.1502-92T(b)(1)(i) (or that member has an ownership change under § 1.1502-96T(b) (relating to ownership changes of subsidiaries)). If, however, the new loss member has had an ownership change before § 1.1502-96T(a) applies, see § 1.1502-96T(c) for the continuing application of the section 382 limitation with respect to the member's pre-change losses.

(5) *Cross-reference.* See section 382(a) and § 1.1502-96T(c) for the continuing effect of an ownership change after a corporation becomes or ceases to be a member.

(b) *Application of section 382 to a new loss member—*(1) *In general.* Section 382 and the regulations thereunder apply

to a new loss member to determine, on a separate entity basis, whether and to what extent a section 382 limitation applies to limit the amount of consolidated taxable income that may be offset by the new loss member's pre-change separate attributes. For example, if an ownership change with respect to the new loss member occurs under section 382 and the regulations thereunder, the amount of consolidated taxable income for any post-change year that may be offset by the new loss member's pre-change separate attributes shall not exceed the section 382 limitation as determined separately under section 382(b) with respect to that member for such year. If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the section 382 limitation of the new loss member does not apply to the portion of the taxable income for such year that is allocable to the period in such year on or before the change date. See generally § 1.382-6 (relating to the allocation of income and loss).

(2) *Adjustment to value.* The value of the new loss member is adjusted to the extent necessary to prevent any duplication of the value of the stock of a member. For example, the principles of § 1.382-8T (relating to controlled groups of corporations) apply in determining the value of a new loss member.

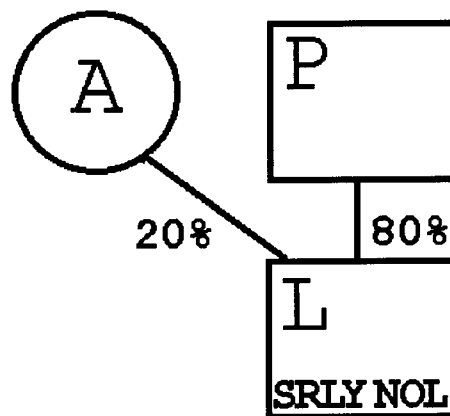
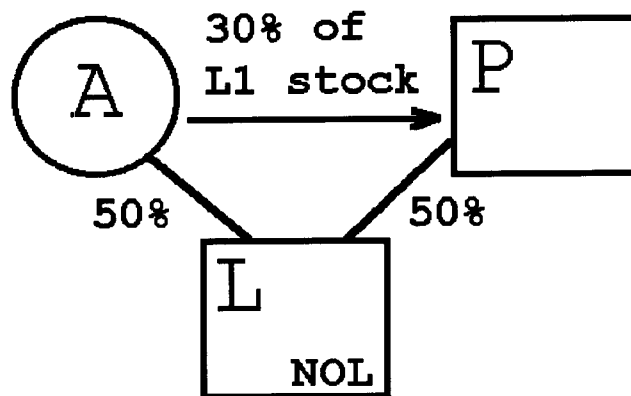
(3) *Pre-change separate attribute defined.* A pre-change separate attribute of a new loss member is—

(i) Any net operating loss carryover of the new loss member described in paragraph (a)(1) of this section; and

(ii) Any recognized built-in loss of the new loss member.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b).

Example 1. Basic case. (a) A and P each own 50 percent of the L stock. On December 19, Year 6, P purchases 30 percent of the L stock from A for cash. L has net operating losses arising in Year 1 and Year 2 that it carries over to Year 6 and Year 7. The following is a graphic illustration of these facts:

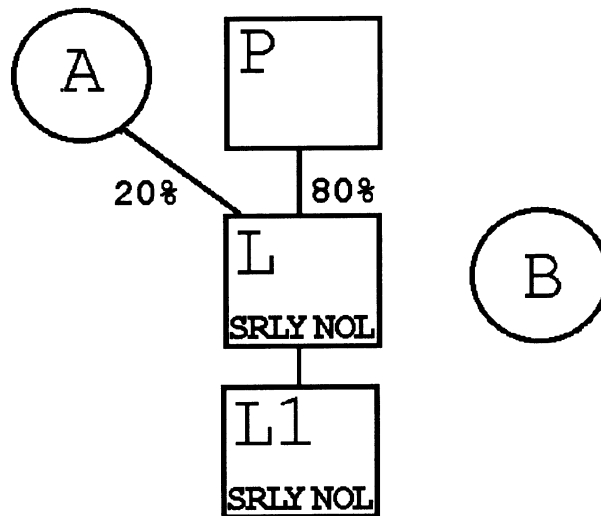
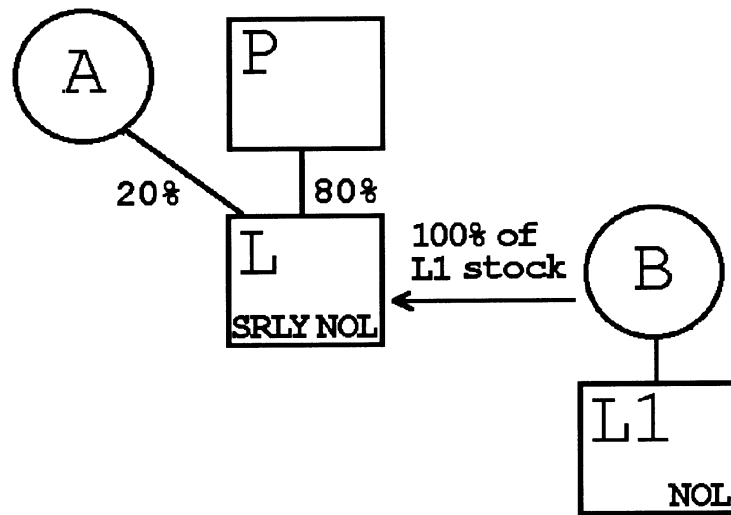


(b) L is a new loss member because it has net operating loss carryovers that arose in a SRLY with respect to the P group and L is not a member of a loss subgroup under §1.1502-91T(d). Under section 382 and the regulations thereunder, L is a loss corporation on December 19, Year 6, that day is a testing date for L, and the testing period for L commences on December 20, Year 3. –

(c) P's purchase of L stock does not cause an ownership change of L on December 19, Year 6, with respect to the net operating loss carryovers from Year 1 and Year 2 under section 382 and §1.382-2T. The use of the loss

carryovers, however, is subject to limitation under §1.1502-21T(c). –

Example 2. Multiple new loss members. (a) The facts are the same as in *Example 1*, and, on December 31, Year 6, L purchases all the stock of L1 from B for cash. L1 has a net operating loss of \$40 arising in Year 3 that it carries over to Year 7. The following is a graphic illustration of these facts:



(b) L1 is a new loss member because it has a net operating loss carryover from Year 3 that arose in a SRLY with respect to the P group and L1 is not a member of a loss subgroup under §1.1502-91T(d)(1). -

(c) L's purchase of all the stock of L1 causes an ownership change of L1 on December 31, Year 6, under section 382 and §1.382-2T. Accordingly, a section 382 limitation based on the value of the L1 stock immediately before the ownership change limits

the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's loss from Year 3.

(d) L1's ownership change in connection with its becoming a member of the P group is an ownership change described in §1.1502-96T(a). Thus, starting on January 1, Year 7, the P group no longer separately tracks owner shifts of the stock of L1 with respect to L1's loss from Year 3. Instead, the P group

is a loss group because of such loss under §1.1502-91T(c). -

Example 3. Ownership changes of new loss members. (a) The facts are the same as in *Example 2*, and, on April 30, Year 7, C purchases all the stock of P for cash. -

(b) L is a new loss member on April 30, Year 7, because its Year 1 and Year 2 losses arose in SRLYs with respect to the P group and it is not a member of a loss subgroup under §1.1502-91T(d)(1). The testing period for L commences on May 1, Year 4. C's purchase of all the P stock causes an ownership change of L on April 30, Year 7, under section 382 and §1.382-2T with respect to its Year 1 and Year 2 losses. Accordingly, a section 382 limitation based on the value of the L stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L's Year 1 and Year 2 losses. The use of those carryovers is also subject to limitation under §1.1502-21T(c). -

(c) The P group is a loss group on April 30, Year 7, because it is entitled to use L1's loss from Year 3, and such loss is no longer treated as a loss of a new loss member starting the day after L1's ownership change on December 31, Year 6. See §§1.1502-96T(a) and 1.1502-91T(c)(2). C's purchase of all the P stock causes an ownership change of P, and therefore the P loss group, on April 30, Year 7, with respect to L1's Year 3 loss. Accordingly, a consolidated section 382 limitation based on the value of the P stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's Year 3 loss. -

(c) *Built-in gains and losses.* As the context may require, the principles of §§1.1502-91T(g) and (h) and 1.1502-93T(c) (relating to built-in gains and losses) apply to a new loss member on a separate entity basis. See §1.1502-91T(g)(3).

(d) *Information statements.* The common parent of a consolidated group that has a new loss member subject to paragraph (b)(1) of this section during a consolidated return year must file the information statement required by §1.382-2T(a)(2)(ii) because of any owner shift, equity structure shift, or issuance or transfer of an option with respect to the new loss member. Instead of filing a separate statement for each new loss member the common parent may file a single statement described in §1.382-2T(a)(2)(ii) with respect to the stock ownership of the common parent (which is treated as a loss corporation). In addition to the information concern-

ing stock ownership of the common parent, the single statement must identify each new loss member and state which new loss members, if any, have had ownership changes during the consolidated return year. The new loss member is, however, required to maintain the records necessary to determine if it has an ownership change. This paragraph (d) applies with respect to the attributes of a new loss member until an event occurs which ends separate tracking under §1.1502-96T(a). After that time, the information statement described in §1.1502-92T(e)(1) must be filed with respect to these attributes.

[T.D. 8678, 61 FR 33352, June 27, 1996]

§1.1502-95T Rules on ceasing to be a member of a consolidated group (or loss subgroup) (temporary).

(a) *In general—(1) Consolidated group.* This section provides rules for applying section 382 on or after the day that a member ceases to be a member of a consolidated group (or loss subgroup). The rules concern how to determine whether an ownership change occurs with respect to losses of the member, and how a consolidated section 382 limitation (or subgroup section 382 limitation) is apportioned to the member. As the context requires, a reference in this section to a loss group, a member, or a corporation also includes a reference to a loss subgroup, and a reference to a consolidated section 382 limitation also includes a reference to a subgroup section 382 limitation.

(2) *Election by common parent.* Only the common parent (not the loss subgroup parent) may make the election under paragraph (c) of this section to apportion either a consolidated section 382 limitation or a subgroup section 382 limitation.

(3) *Coordination with §§1.1502-91T through 1.1502-93T.* For rules regarding the determination of whether there is an ownership change of a loss subgroup and the computation of a subgroup section 382 limitation following such an ownership change, see §§1.1502-91T through 1.1502-93T.

(b) *Separate application of section 382 when a member leaves a consolidated group—(1) In general.* Except as provided in §§1.1502-91T through 1.1502-93T

(relating to rules applicable to loss groups and loss subgroups), section 382 and the regulations thereunder apply to a corporation on a separate entity basis after it ceases to be a member of a consolidated group (or loss subgroup). Solely for purposes of determining whether a corporation has an ownership change—

(i) Any portion of a consolidated net operating loss that is apportioned to the corporation under §1.1502-21T(b) is treated as a net operating loss of the corporation beginning on the first day of the taxable year in which the loss arose;

(ii) The testing period may include the period during which (or before which) the corporation was a member of the group (or loss subgroup); and

(iii) Except to the extent provided in §1.1502-20(g) (relating to reattributed losses), the day it ceases to be a member of a consolidated group is treated as a testing date of the corporation within the meaning of §1.382-2(a)(4).

(2) *Effect of a prior ownership change of the group.* If a loss group has had an ownership change under §1.1502-92T before a corporation ceases to be a member of a consolidated group (the former member)—

(i) Any pre-change consolidated attribute that is subject to a consolidated section 382 limitation continues to be treated as a pre-change loss with respect to the former member after the attribute is apportioned to the former member;

(ii) The former member's section 382 limitation with respect to such attribute is zero except to the extent the common parent apportions under paragraph (c) of this section all or a part of

the consolidated section 382 limitation to the former member;

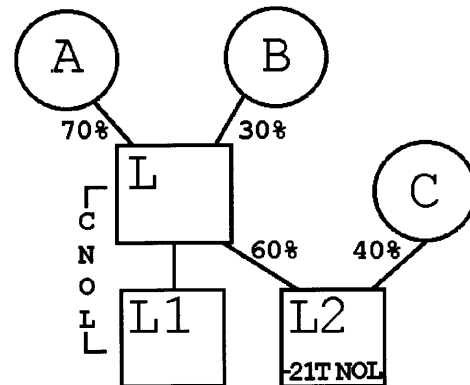
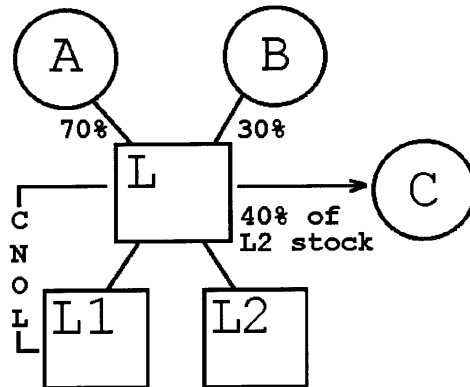
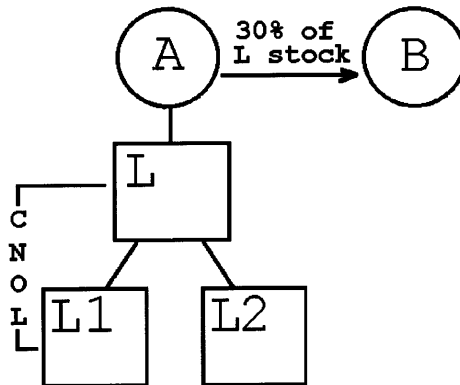
(iii) The testing period for determining a subsequent ownership change with respect to such attribute begins no earlier than the first day following the loss group's most recent change date; and

(iv) As generally provided under section 382, an ownership change of the former member that occurs on or after the day it ceases to be a member of a loss group may result in an additional, lesser limitation amount with respect to such loss.

(3) *Application in the case of a loss subgroup.* If two or more former members are included in the same loss subgroup immediately after they cease to be members of a consolidated group, the principles of paragraphs (b) and (c) of this section apply to the loss subgroup. Therefore, for example, an apportionment by the common parent under paragraph (c) of this section is made to the loss subgroup rather than separately to its members. –

(4) *Examples.* The following examples illustrate the principles of this paragraph (b).

Example 1. Treatment of departing member as a separate corporation throughout the testing period. (a) A owns all the L stock. L owns all the stock of L1 and L2. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3. On January 12, Year 2, A sells 30 percent of the L stock to B. On February 7, Year 3, L sells 40 percent of the L2 stock to C, and L2 ceases to be a member of the group. A portion of the Year 1 consolidated net operating loss is apportioned to L2 under §1.1502-21T(b) and is carried to L2's first separate return year, which ends December 31, Year 3. The following is a graphic illustration of these facts:



(b) Under paragraph (b)(1) of this section, L2 is a loss corporation on February 7, Year 3. Under paragraph (b)(1)(iii) of this section, February 7, Year 3, is a testing date. Under paragraph (b)(1)(ii) of this section, the testing period for L2 with respect to this testing date commences on January 1, Year 1, the first day of the taxable year in which the portion of the consolidated net operating loss apportioned to L2 arose. Therefore, in determining whether L2 has an ownership change on February 7, Year 3, B's purchase of 30 percent of the L stock and C's purchase of 40 percent of the L2 stock are each owner shifts. L2 has an ownership change under section 382(g) and § 1.382-2T because B and C have increased their ownership interests in L2 by 18 and 40 percentage points, respectively, during the testing period. -

Example 2. Effect of prior ownership change of loss group. (a) L owns all the L1 stock and L1 owns all the L2 stock. The L loss group had an ownership change under § 1.1502-92T in Year 2 with respect to a consolidated net operating loss arising in Year 1 and carried over to Year 2 and Year 3. The consolidated section 382 limitation computed solely on the basis of the value of the stock of L is \$100. On December 31, Year 2, L1 sells 25 percent of the stock of L2 to B. L2 is apportioned a portion of the Year 1 consolidated net operating loss which it carries over to its first separate return year ending after December 31, Year 2. L2's separate section 382 limitation with respect to this loss is zero unless L elects to apportion all or a part of the consolidated section 382 limitation to L2. (See paragraph (c) of this section for rules regarding the apportionment of a consolidated section 382 limitation.) L apportions \$50 of the consolidated section 382 limitation to L2. -

(b) On December 31, Year 3, L1 sells its remaining 75 percent stock interest in L2 to C, resulting in an ownership change of L2. L2's section 382 limitation computed on the change date with respect to the value of its stock is \$30. Accordingly, L2's section 382 limitation for post-change years ending after December 31, Year 3, with respect to its pre-change losses, including the consolidated net operating losses apportioned to it from the L group, is \$30, adjusted as required by section 382 and the regulations thereunder.

(c) *Apportionment of a consolidated section 382 limitation—(1) In general.* The common parent may elect to apportion all or any part of a consolidated section 382 limitation to a former member (or loss subgroup). See paragraph (e) of this section for the time and manner of making the election to apportion.

(2) *Amount of apportionment.* The common parent may apportion all or part of each element of the consolidated

section 382 limitation determined under § 1.1502-93T. For this purpose, the consolidated section 382 limitation consists of two elements—

(i) The value element, which is the element of the limitation determined under section 382(b)(1) (relating to value multiplied by the long-term tax-exempt rate) without regard to such adjustments as those described in section 382(b)(2) (relating to the carryforward of unused section 382 limitation), section 382(b)(3)(B) (relating to the section 382 limitation for the post-change year that includes the change date), section 382(h) (relating to built-in gains and section 338 gains), and section 382(m)(2) (relating to short taxable years); and

(ii) The adjustment element, which is so much (if any) of the limitation for the taxable year during which the former member ceases to be a member of the consolidated group that is attributable to a carryover of unused limitation under section 382(b)(2) or to recognized built-in gains under 382(h).

(3) *Effect of apportionment on the consolidated section 382 limitation.* The value element of the consolidated section 382 limitation for any post-change year ending after the day that a former member (or loss subgroup) ceases to be a member(s) is reduced to the extent that it is apportioned under this paragraph (c). The consolidated section 382 limitation for the post-change year in which the former member (or loss subgroup) ceases to be a member(s) is also reduced to the extent that the adjustment element for that year is apportioned under this paragraph (c).

(4) *Effect on corporations to which the consolidated section 382 limitation is apportioned.* The amount of the value element that is apportioned to a former member (or loss subgroup) is treated as the amount determined under section 382(b)(1) for purposes of determining the amount of that corporation's (or loss subgroup's) section 382 limitation for any taxable year ending after the former member (or loss subgroup) ceases to be a member(s). Appropriate adjustments must be made to the limitation based on the value element so apportioned for a short taxable year, carryforward of unused limitation, or any other adjustment required under

section 382. The adjustment element apportioned to a former member (or loss subgroup) is treated as an adjustment under section 382(b)(2) or section 382(h), as appropriate, for the first taxable year after the member (or members) ceases to be a member (or members).

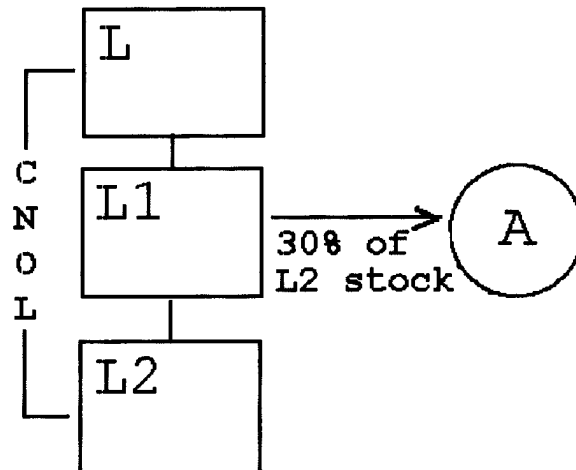
(5) *Deemed apportionment when loss group terminates.* If a loss group terminates, to the extent the consolidated section 382 limitation is not apportioned under paragraph (c)(1) of this section, the consolidated section 382 limitation is deemed to be apportioned to the loss subgroup that includes the common parent, or, if there is no loss subgroup that includes the common parent immediately after the loss group terminates, to the common parent. A loss group terminates on the first day of the first taxable year that is a separate return year with respect to each member of the former loss group.

(6) *Appropriate adjustments when former member leaves during the year.*

Appropriate adjustments are made to the consolidated section 382 limitation for the consolidated return year during which the former member (or loss subgroup) ceases to be a member(s) to reflect the inclusion of the former member in the loss group for a portion of that year.

(7) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. Consequence of apportionment. (a) L owns all the L1 stock and L1 owns all the L2 stock. The L group has a \$200 consolidated net operating loss arising in Year 1 that is carried over to Year 2. At the close of December 31, Year 1, the group has an ownership change under § 1.1502-92T. The ownership change results in a consolidated section 382 limitation of \$10 based on the value of the stock of the group. On August 29, Year 2, L1 sells 30 percent of the stock of L2 to A. L2 is apportioned \$90 of the group's \$200 consolidated net operating loss under § 1.1502-21T(b). L, the common parent, elects to apportion \$6 of the consolidated section 382 limitation to L2. The following is a graphic illustration of these facts:



(b) For its separate return years ending after August 29, Year 2 (other than the taxable year ending December 31, Year 2), L2's section 382 limitation with respect to the \$90 of the group's net operating loss apportioned to it is \$6, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment. For its consoli-

dated return years ending after August 29, Year 2, (other than the year ending December 31, Year 2) the L group's consolidated section 382 limitation with respect to the remaining \$110 of pre-change consolidated attribute is \$4 (\$10 minus the \$6 value element apportioned to L2), adjusted, as appropriate,

for any short taxable year, unused section 382 limitation, or other adjustment.

(c) For the L group's consolidated return year ending December 31, Year 2, the value element of its consolidated section 382 limitation is increased by \$4 (rounded to the nearest dollar), to account for the period during which L2 was a member of the L group (\$6, the consolidated section 382 limitation apportioned to L2, times 241/365, the ratio of the number of days during Year 2 that L2 is a member of the group to the number of days in the group's consolidated return year). See paragraph (c)(6) of this section. Therefore, the value element of the consolidated section 382 limitation for Year 2 of the L group is \$8 (rounded to the nearest dollar).

(d) The section 382 limitation for L2's short taxable year ending December 31, Year 2, is \$2 (rounded to the nearest dollar), which is the amount that bears the same relationship to \$6, the value element of the consolidated section 382 limitation apportioned to L2, as the number of days during that short taxable year, 124 days, bears to 365. See § 1.382-4(c).

Example 2. Consequence of no apportionment. The facts are the same as in *Example 1*, except that L does not elect to apportion any portion of the consolidated section 382 limitation to L2. For its separate return years ending after August 29, Year 2, L2's section 382 limitation with respect to the \$90 of the group's pre-change consolidated attribute apportioned to L2 is zero under paragraph (b)(2)(ii) of this section. Thus, the \$90 consolidated net operating loss apportioned to L2 cannot offset L2's taxable income in any of its separate return years ending after August 29, Year 2. For its consolidated return years ending after August 29, Year 2, the L group's consolidated section 382 limitation with respect to the remaining \$110 of pre-change consolidated attribute is \$10, adjusted, as appropriate, for any short taxable year, unused section 382 limitation, or other adjustment.

Example 3. Apportionment of adjustment element. The facts are the same as in *Example 1*,

except that L2 ceases to be a member of the L group on August 29, Year 3, and the L group has a \$4 carryforward of an unused consolidated section 382 limitation (under section 382(b)(2)) to the 1993 consolidated return year.

The carryover of unused limitation increases the consolidated section 382 limitation for the Year 3 consolidated return year from \$10 to \$14. L may elect to apportion all or any portion of the \$10 value element and all or any portion of the \$4 adjustment element to L2.

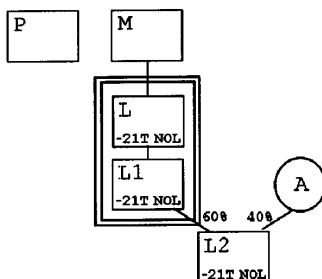
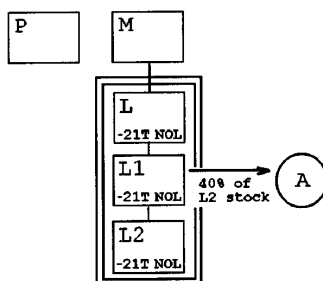
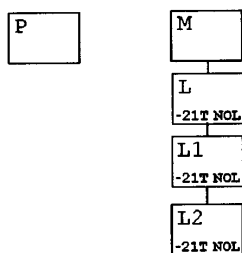
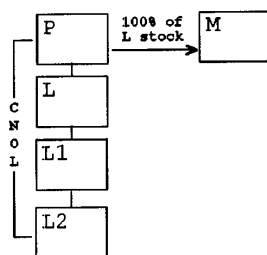
(d) *Rules pertaining to ceasing to be a member of a loss subgroup—(1) In general.* A corporation ceases to be a member of a loss subgroup—

(i) On the first day of the first taxable year for which it files a separate return; or

(ii) The first day that it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent (treating for this purpose the loss subgroup parent as the common parent described in section 1504(a)(1)(A)).

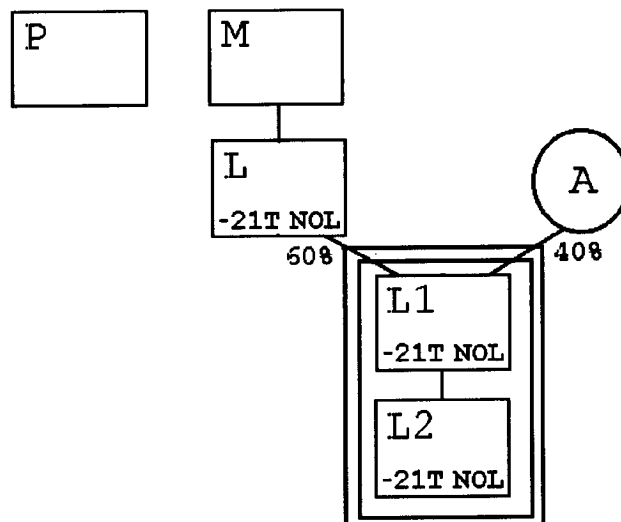
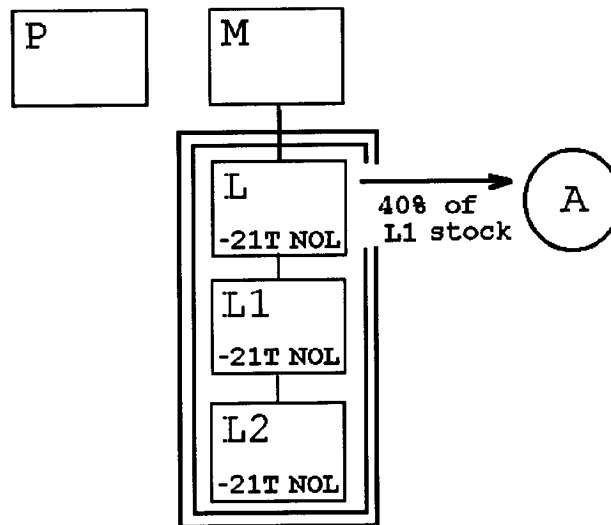
(2) *Examples.* The principles of this paragraph (d) are illustrated by the following examples.

Example 1. Basic case. (a) P owns all the L stock, L owns all the L1 stock and L1 owns all the L2 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On December 11, Year 2, P sells all the stock of L to corporation M. Each of L, L1, and L2 is apportioned a portion of the Year 1 consolidated net operating loss, and thereafter each joins with M in filing consolidated returns. Under § 1.1502-92T, the L loss subgroup has an ownership change on December 11, Year 2. The L loss subgroup has a subgroup section 382 limitation of \$100. The following is a graphic illustration of these facts:



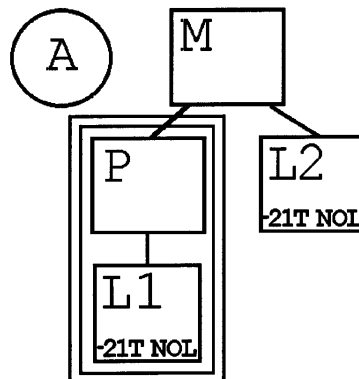
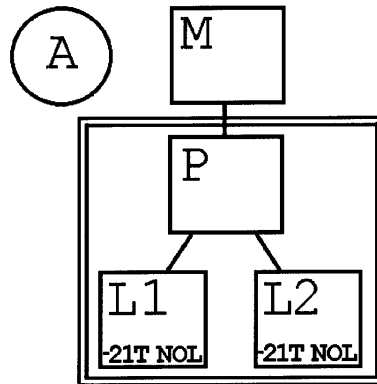
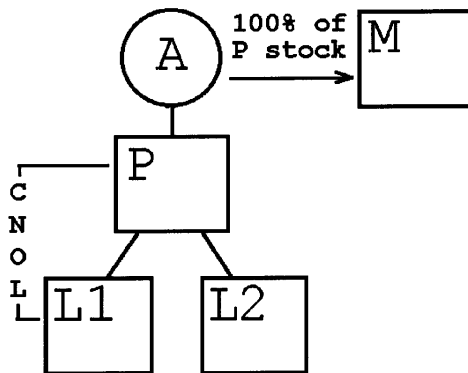
(b) On May 22, Year 3, L1 sells 40 percent of the L2 stock to A. L2 carries over a portion of the P group's net operating loss from Year 1 to its separate return year ending December 31, Year 3. Under paragraph (d)(1) of this section, L2 ceases to be a member of the L loss subgroup on May 22, Year 3, which is both (1) the first day of the first taxable year for which it files a separate return and (2) the day it ceases to bear a relationship described in section 1504(a)(1) to the loss subgroup parent, L. The net operating loss of L2 that is carried over from the P group is treated as a pre-change loss of L2 for its separate return years ending after May 22, Year 3. Under paragraphs (a)(2) and (b)(2) of this section, the separate section 382 limitation with respect to this loss is zero unless M elects to apportion all or a part of the subgroup section 382 limitation of the L loss subgroup to L2.

Example 2. Formation of a new loss subgroup. The facts are the same as in *Example 1*, except that A purchases 40 percent of the L1 stock from L rather than purchasing L2 stock from L1. L1 and L2 file a consolidated return for their first taxable year ending after May 22, Year 3, and each of L1 and L2 carries over a part of the net operating loss of the P group that arose in Year 1. Under paragraph (d)(1) of this section, L1 and L2 cease to be members of the L loss subgroup on May 22, Year 3. The net operating losses carried over from the P group are treated as pre-change subgroup attributes of the loss subgroup composed of L1 and L2. The subgroup section 382 limitation with respect to those losses is zero unless M elects to apportion all or part of the subgroup section 382 limitation of the L loss subgroup to the L1 loss subgroup. The following is a graphic illustration of these facts:



Example 3. Ceasing to bear a section 1504(a)(1) relationship to a loss subgroup parent. (a) A owns all the stock of P, and P owns all the stock of L1 and L2. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 3 and Year 4. Corporation M acquires all the stock of P on November 11, Year 3, and P, L1, and L2 there-

after file consolidated returns with M. M's acquisition results in an ownership change of the P loss subgroup under §1.1502-92T(b)(1)(ii). The following is a graphic illustration of these facts:



(b) P distributes the L2 stock to M on October 7, Year 4. L2 ceases to be a member of the P loss subgroup on October 7, Year 4, the first day that it ceases to bear the relationship described in section 1504(a)(1) to P, the P loss subgroup parent. See paragraph (d)(1)(ii) of this section. Thus, the section 382 limitation with respect to the pre-change subgroup attributes attributable to L2 is zero except to the extent M elects to apportion all or a part of the subgroup section 382 limitation of the P loss subgroup to L2.

Example 4. Relationship through a successor. The facts are the same as in *Example 3*, except that, instead of P's distributing the stock of L2, L2 merges into L1 on October 7, Year 4. L1 (as successor to L2 in the merger within the meaning of § 1.382-2T(f)(4)) continues to bear a relationship described in section 1504(a)(1) to P, the loss subgroup parent. Thus, L2 does not cease to be a member of the P loss subgroup as a result of the merger.

(e) *Filing the election to apportion—(1) Form of the election to apportion.* An election under paragraph (c) of this section must be made by the common parent. The election must be made in the form of the following statement: "THIS IS AN ELECTION UNDER § 1.1502-95T OF THE INCOME TAX REGULATIONS TO APPORTION ALL OR PART OF THE [insert either CONSOLIDATED SECTION 382 LIMITATION or SUBGROUP SECTION 382 LIMITATION, as appropriate] TO [insert name and E.I.N. of the corporation (or the corporations that compose a new loss subgroup) to which allocation is made]. The declaration must also include the following information, as appropriate—

(i) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation);

(ii) The amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the taxable year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(iii) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of this section; and

(iv) The name and E.I.N. of the common parent making the apportionment.

(2) *Signing of the election.* The election statement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns.

(3) *Filing of the election.* The election statement must be filed by the common parent of the group that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member. The common parent must also deliver a copy of the statement to the former member (or the members of the new loss subgroup) on or before the day the group files its income tax return for the consolidated return year that the former member (or new loss subgroup) ceases to be a member. A copy of the statement must be attached to the first return of the former member (or the first return in which the members of a new loss subgroup join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election.* An election statement made under paragraph (c) of this section is revocable only with the consent of the Commissioner.

[T.D. 8678, 61 FR 33355, June 27, 1996]

§ 1.1502-96T Miscellaneous rules (temporary).

(a) *End of separate tracking of losses—*

(1) *Application.* This paragraph (a) applies to a member (or a loss subgroup) with a net operating loss carryover that arose (or is treated under § 1.1502-21T(c) as arising) in a SRLY (or a net unrealized built-in gain or loss determined at the time that the member (or loss subgroup) becomes a member of the consolidated group if there is—

(i) An ownership change of the member (or loss subgroup) in connection with, or after, becoming a member of the group; or

(ii) A period of 5 consecutive years following the day that the member (or loss subgroup) becomes a member of a group during which the member (or loss subgroup) has not had an ownership change.

(2) *Effect of end of separate tracking.* If this paragraph (a) applies with respect to a member (or loss subgroup), then, starting on the day after the earlier of the change date (but not earlier than the day the member (or loss subgroup) becomes a member of the consolidated group) or the last day of the 5 consecutive year period described in paragraph (a)(1)(ii) of this section, the member's net operating loss carryover that arose (or is treated under § 1.1502-21T(c) as arising) in a SRLY, is treated as described in § 1.1502-91T(c)(1)(i). Also, the member's separately computed net unrealized built-in gain or loss is included in the determination whether the group has a net unrealized built-in gain or loss. The preceding sentences also apply for purposes of determining whether there is an ownership change with respect to such attributes following such change date (or earlier day) or 5 consecutive year period. Thus, for example, starting the day after the change date or the end of the 5 consecutive year period—

(i) The consolidated group which includes the new loss member or loss subgroup is no longer required to separately track owner shifts of the stock of the new loss member or loss subgroup parent to determine if an ownership change occurs with respect to the attributes of the new loss member or members included in the loss subgroup;

(ii) The group includes the member's attributes in determining whether it is a loss group under § 1.1502-91T(c);

(iii) There is an ownership change with respect to such attributes only if the group is a loss group and has an ownership change; and

(iv) If the group has an ownership change, such attributes are pre-change consolidated attributes subject to the loss group's consolidated section 382 limitation.

(3) *Continuing effect of end of separate tracking.* As the context may require, a current group determines which of its members are included in a loss subgroup on any testing date by taking

into account the application of this section in the former group. See the example in § 1.1502-91T(f)(2).

(4) *Special rule for testing period.* For purposes of determining the beginning of the testing period for a loss group, the member's (or loss subgroup's) net operating loss carryovers (or net unrealized built-in gain or loss) described in paragraph (a)(2) of this section are considered to arise—

–(i) in a case described in paragraph (a)(1)(i) of this section, in a taxable year that begins not earlier than the later of the day following the change date or the day that the member becomes a member of the group; and –(ii) in a case described in paragraph (a)(1)(ii) of this section, in a taxable year that begins 3 years before the end of the 5 consecutive year period.

(5) *Limits on effects of end of separate tracking.* The rule contained in this paragraph (a) applies solely for purposes of §§ 1.1502-91T through 1.1502-95T and this section (other than paragraph (b)(2)(ii)(B) of this section (relating to the definition of pre-change attributes of a subsidiary)) and § 1.1502-98T, and not for purposes of other provisions of the consolidated return regulations, including, for example, §§ 1.1502-15T and 1.1502-21T (relating to the consolidated net operating loss deduction). See also paragraph (c) of this section for the continuing effect of an ownership change with respect to pre-change attributes.

(b) *Ownership change of subsidiary—(1) Ownership change of a subsidiary because of options or plan or arrangement.* Notwithstanding § 1.1502-92T, a subsidiary may have an ownership change for purposes of section 382 with respect to its attributes which a group or loss subgroup includes in making a determination under § 1.1502-91T(c)(1) (relating to the definition of loss group) or § 1.1502-91T(d) (relating to the definition of loss subgroup). The subsidiary has such an ownership change if it has an ownership change under the principles of § 1.1502-95T(b) and section 382 and the regulations thereunder (determined on a separate entity basis by treating the subsidiary as not being a member of a consolidated group) in the event of—

(i) The deemed exercise under § 1.382-4(d) of an option or options (other than

an option with respect to stock of the common parent) held by a person (or persons acting pursuant to a plan or arrangement) to acquire more than 20 percent of the stock of the subsidiary; or

(ii) An increase by 1 or more 5-percent shareholders, acting pursuant to a plan or arrangement to avoid an ownership change of a subsidiary, in their percentage ownership interest in the subsidiary by more than 50 percentage points during the testing period of the subsidiary through the acquisition (or deemed acquisition pursuant to § 1.382-4(d)) of ownership interests in the subsidiary and in higher-tier members with respect to the subsidiary.

(2) *Effect of the ownership change*—(i) *In general.* If a subsidiary has an ownership change under paragraph (b)(1) of this section, the amount of consolidated taxable income for any post-change year that may be offset by the pre-change losses of the subsidiary shall not exceed the section 382 limitation for the subsidiary. For purposes of this limitation, the value of the subsidiary is determined solely by reference to the value of the subsidiary's stock.

(ii) *Pre-change losses.* The pre-change losses of a subsidiary are—

(A) Its allocable part of any consolidated net operating loss which is attributable to it under § 1.1502-21T(b) (determined on the last day of the consolidated return year that includes the change date) that is not carried back and absorbed in a taxable year prior to the year including the change date;

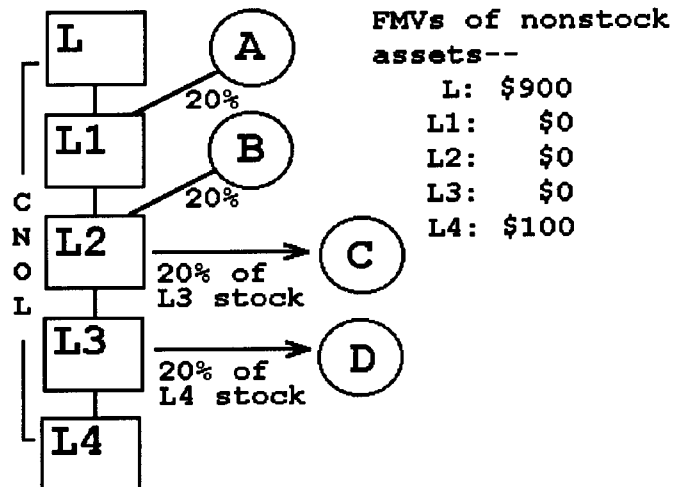
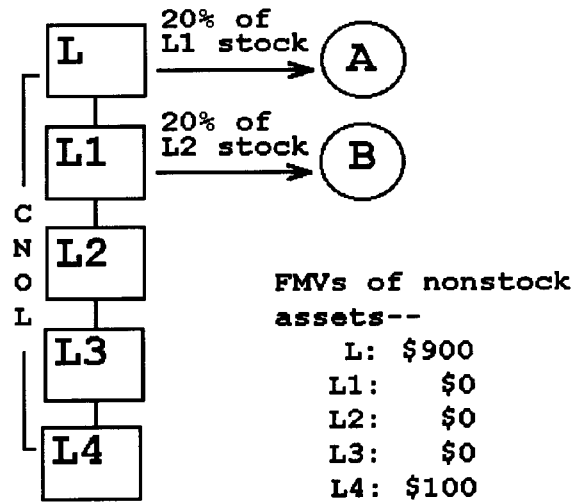
(B) Its net operating loss carryovers that arose (or are treated under § 1.1502-21T(c) as having arisen) in a SRLY; and

(C) Its recognized built-in loss with respect to its separately computed net unrealized built-in loss, if any, determined on the change date.

(3) *Coordination with §§ 1.1502-91T, 1.1502-92T, and 1.1502-94T.* If an increase in percentage ownership interest causes an ownership change with respect to an attribute under this paragraph (b) and under § 1.1502-92T on the same day, the ownership change is considered to occur only under § 1.1502-92T and not under this paragraph (b). See § 1.1502-94T for anti-duplication rules relating to value.

(4) *Example.* The following example illustrates paragraph (b)(1)(ii) of this section.

Example. Plan to avoid an ownership change of a subsidiary. (a) L owns all the stock of L1, L1 owns all the stock of L2, L2 owns all the stock of L3, and L3 owns all the stock of L4. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. L has assets other than its L1 stock with a value of \$900. L1, L2, and L3 own no assets other than their L2, L3, and L4 stock. L4 has assets with a value of \$100. During Year 2, A, B, C, and D, acting pursuant to a plan to avoid an ownership change of L4, acquire the following ownership interests in the members of the L loss group: (A) on September 11, Year 2, A acquires 20 percent of the L1 stock from L and B acquires 20 percent of the L2 stock from L1; and (B) on September 20, Year 2, C acquires 20 percent of the stock of L3 from L2 and D acquires 20 percent of the stock of L4 from L3. The following is a graphic illustration of these facts:



(b) The acquisitions by A, B, C, and D pursuant to the plan have increased their respective percentage ownership interests in L4 by approximately 10, 13, 16, and 20 percentage points, for a total of approximately 59 percentage points during the testing period. This more than 50 percentage point increase in the percentage ownership interest in L4 causes an ownership change of L4 under paragraph (b)(2) of this section.

(c) *Continuing effect of an ownership change.* A loss corporation (or loss subgroup) that is subject to a limitation under section 382 with respect to its pre-change losses continues to be subject to the limitation regardless of whether it becomes a member or ceases to be a member of a consolidated group. See § 1.382-5T(d) (relating to successive ownership changes and absorption of a section 382 limitation).

[T.D. 8678, 61 FR 33362, June 27, 1996]

§ 1.1502-97T Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case (temporary). [Reserved]

[T.D. 8678, 61 FR 33364, June 27, 1996]

§ 1.1502-98T Coordination with section 383 (temporary).

The rules contained in §§ 1.1502-91T through 1.1502-96T also apply for purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses. Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, § 1.383-1 applies the principles of §§ 1.1502-91T through 1.1502-96T. For example, if a loss group has an ownership change under § 1.1502-92T and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of §§ 1.383-1(c)(6) and 1.1502-93T (relating to the computation of the consolidated section 382 limitation).

[T.D. 8678, 61 FR 33364, June 27, 1996]

§ 1.1502-99T Effective dates (temporary).

(a) *Effective date.* Sections 1.1502-91T through 1.1502-96T and 1.1502-98T apply to any testing date on or after January 1, 1997. Sections 1.1502-94T through 1.1502-96T also apply on any date on or after January 1, 1997, on which a corporation becomes a member of a group or on which a corporation ceases to be a member of a loss group (or a loss subgroup).

(b) *Testing period may include a period beginning before January 1, 1997.* A testing period for purposes of §§ 1.1502-91T through 1.1502-96T and 1.1502-98T may include a period beginning before January 1, 1997. Thus, for example, in applying § 1.1502-92T(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after January 1, 1997, takes into account the period beginning before January 1, 1997, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See § 1.1502-92T(b)(1).

(c) *Transition rules—(1) Methods permitted—(i) In general.* For the period ending before January 1, 1997, a consolidated group is permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to determine if an ownership change occurred with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a net unrealized built-in loss. If an ownership change occurred during that period, the group is also permitted to use any method described in paragraph (c)(2) of this section which is consistently applied to compute the amount of the section 382 limitation that applies to limit the use of taxable income in any post-change year ending before, on, or after January 1, 1997. The preceding sentence does not preclude the imposition of an additional, lesser limitation due to a subsequent ownership change nor, except as provided in paragraph (c)(1)(iii) of this

section, does it permit the beginning of a new testing period for the loss group.

(ii) *Adjustments to offset excess limitation.* If an ownership change occurred during the period ending before January 1, 1997, and a method described in paragraph (c)(2) of this section was not used for a post-change year, the members (or group) must reduce the section 382 limitation for post-change years for which an income tax return is filed after January 1, 1997, to offset, as quickly as possible, the effects of any section 382 limitation that members took into account in excess of the amount that would have been allowable under §§ 1.1502-91T through 1.1502-96T and 1.1502-98T.

(iii) *Coordination with effective date.* Notwithstanding that a group may have used a method described in paragraph (c)(2)(ii) or (iii) of this section for the period before January 1, 1997, §§ 1.1502-91T through 1.1502-96T and 1.1502-98T apply to any testing date occurring on or after January 1, 1997, for purposes of determining whether there is an ownership change with respect to any losses and, if so, the collateral consequences. Any ownership change of a member other than the common parent pursuant to a method described in paragraph (c)(2)(ii) or (iii) of this section does not cause a new testing period of the loss group to begin for purposes of applying § 1.1502-92T on or after January 1, 1997.

(2) *Permitted methods.* The methods described in this paragraph (c)(2) are:

(i) A method that does not materially differ from the rules in §§ 1.1502-91T through 1.1502-96T and 1.1502-98T (other than those in § 1.1502-95T(c) (relating to the apportionment of a section 382 limitation) as they would apply to a corporation that ceases to be a member of the group before January 1, 1997). As the context requires, the method must treat references to rules in current regulations as references to rules in regulations generally effective for taxable years before January 1, 1997. Thus, for example, the taxpayer must treat a reference to § 1.382-4(d) (relating to options) as a reference to § 1.382-2T(h)(4) for any testing date to which § 1.382-2T(h)(4) applies. Similarly, a reference to § 1.1502-21T(c) may be a reference to § 1.1502-21A(c), as appropriate. Further-

more, the method must treat all corporations that were affiliated on January 1, 1987, and continuously thereafter as having met the 5 consecutive year requirement of § 1.1502-91T(d)(2)(i) on any day before January 1, 1992, on which the determination of net unrealized built-in gain or loss of a loss subgroup is made;

(ii) A reasonable application of the rules in section 382 and the regulations thereunder applied to each member on a separate entity basis, treating each member's allocable part of a consolidated net operating loss which is attributable to it under § 1.1502-21T(b) as a net operating loss of that member and applying rules similar to § 1.382-8T to avoid duplication of value in computing the section 382 limitation for the member (see § 1.382-8T(h) (relating to the effective date and transition rules regarding controlled groups)); or

(iii) A method approved by the Commissioner upon application by the common parent.

(d) *Amended returns.* A group may file an amended return in connection with an ownership change occurring before January 1, 1997, to modify the amount of a section 382 limitation with respect to a consolidated net operating loss, a net operating loss carryover (including net operating loss carryovers arising in SRLYs), or a recognized built-in loss (or gain) only if it files amended returns:

(1) For the earliest taxable year ending after December 31, 1986, in which it had an ownership change, if any, under § 1.1502-92T;

(2) For all subsequent taxable years for which returns have already been filed as of the date of the amended return;

(3) The modification with respect to all members for all taxable years ending in 1987 and thereafter complies with §§ 1.1502-91T through 1.1502-96T and 1.1502-98T; and

(4) The amended return(s) permitted by the applicable statute of limitations is/are filed before March 26, 1997.

(e) *Section 383.* This section also applies for the purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses.

[T.D. 8678, 61 FR 33364, June 27, 1996]

§ 1.1502-100 Corporations exempt from tax.

(a) *In general*—(1) *Computation of tax liability.* The tax liability for a consolidated return year of a group of two or more corporations described in section 1504(e) which are exempt from taxation under section 501 (hereinafter referred to in this section as “exempt group”) shall be determined on a consolidated basis by applying the provisions of subchapter F of chapter 1 of the code in the manner provided in this section. See section 1504(e) for tax-exempt corporations eligible to file a consolidated return.

(2) *Applicability of other consolidated return provisions.* The provisions of § 1.1502-1 through § 1.1502-80 shall be applicable to an exempt group to the extent they are not inconsistent with the provisions of this section or the provisions of subchapter F of chapter 1 of the Code. For purposes of applying the provisions of § 1.1502-1 through § 1.1502-80 to an exempt group, the following substitutions shall be made:

(i) The term “exempt group” shall be substituted for the term “group”,

(ii) The terms “unrelated business taxable income”, “separate unrelated business taxable income”, and “consolidated unrelated business taxable income” shall be substituted for the terms “taxable income”, “separate taxable income”, and “consolidated taxable income”, and

(iii) The term “consolidated liability for tax determined under § 1.1502-2” (or an equivalent term) shall mean the consolidated liability for tax of an exempt group determined under paragraph (b) of this section.

(b) *Consolidated liability for tax.* The tax liability for a consolidated return year of an exempt group is the tax imposed by section 511(a) or section 1201(a) on the consolidated unrelated business taxable income for the year (determined under paragraph (c) of this section), and by allowing the credits and surtax exemption provided in § 1.1502-2.

(c) *Consolidated unrelated business taxable income.* The consolidated unrelated business taxable income for a consolidated return year shall be determined by taking into account:

(1) The separate unrelated business taxable income of each member of the exempt group (determined under paragraph (d) of this section);

(2) Any consolidated net operating loss deduction (determined under §§ 1.1502-21A or 1.1502-21T (as appropriate) subject to the limitations provided in section 512(b)(6));

(3) Any consolidated charitable contribution deduction (determined under § 1.1502-24) subject to the limitations provided in section 512(b)(10); and

(4) Any consolidated net gain or net loss from the disposition of debt-financed property (as defined in section 514(b)) taken into account as provided by section 514(a), or from the cutting of timber to which section 631 applies.

(d) *Separate unrelated business taxable income.* The separate unrelated business taxable income of a member of an exempt group shall be computed in accordance with the provisions of section 512 covering the determination of unrelated business taxable income of separate corporations, except that:

(1) The provisions of paragraphs (a) through (k) and (o) of § 1.1502-12 shall apply; and

(2) No charitable contributions deduction shall be taken into account under section 512(b)(10).

See sections 511(c) and 512(a)(3)(C) for special rules applicable to organizations described in section 501(c)(2).

[T.D. 7595, 44 FR 10382, Feb. 20, 1979, as amended by T.D. 8677, 61 FR 33325, June 27, 1996]

§ 1.1503-1 Computation and payment of tax.

(a) *General rule.* In any case in which a consolidated return is filed or required to be filed, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations prescribed under section 1502 promulgated prior to the last date prescribed by law for the filing of such return.

(b) *Limitation.* If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 921) or one or more regulated public utilities (as defined in section 1503 (c)), the increase in tax described in section 1503 (a) shall be applied in a

manner provided in the regulations under section 1502.

[T.D. 6500, 25 FR 12105, Nov. 26, 1960, as amended by T.D. 7244, 37 FR 28897, Dec. 30, 1972]

§ 1.1503-2 Dual consolidated loss.

(a) *Purpose and scope.* This section provides rules for the application of section 1503(d), concerning the determination and use of dual consolidated losses. Paragraph (b) of this section provides a general rule prohibiting a dual consolidated loss from offsetting the taxable income of a domestic affiliate. Paragraph (c) of this section provides definitions of the terms used in this section. Paragraph (d) of this section provides rules for calculating the amount of a dual consolidated loss and for adjusting the basis of stock of a dual resident corporation. Paragraph (e) of this section contains an anti-avoidance provision. Paragraph (f) of this section applies the rules of paragraph (d) of this section to the computation of foreign tax credit limitations. Paragraph (g) of this section provides certain exceptions to the limitation rule of paragraph (b) of this section. Finally, paragraph (h) of this section provides the effective date of the regulations and a provision for the retroactive application of the regulations to qualifying taxpayers.

(b) *In general—(1) Limitation on the use of a dual consolidated loss to offset income of a domestic affiliate.* Except as otherwise provided in this section, a dual consolidated loss of a dual resident corporation cannot offset the taxable income of any domestic affiliate in the taxable year in which the loss is recognized or in any other taxable year, regardless of whether the loss offsets income of another person under the income tax laws of a foreign country and regardless of whether the income that the loss may offset in the foreign country is, has been, or will be subject to tax in the United States. Pursuant to paragraph (c) (1) and (2) of this section, the same limitation shall apply to a dual consolidated loss of a separate unit of a domestic corporation as if the separate unit were a wholly owned subsidiary of such corporation.

(2) *Limitation on the use of a dual consolidated loss to offset income of a succes-*

sor-in-interest. A dual consolidated loss of a dual resident corporation also cannot be used to offset the taxable income of another corporation by means of a transaction in which the other corporation succeeds to the tax attributes of the dual resident corporation under section 381 of the Code. Similarly, a dual consolidated loss of a separate unit of a domestic corporation cannot be used to offset income of the domestic corporation following the termination, liquidation, sale, or other disposition of the separate unit. However, if a dual resident corporation transfers its assets to another corporation in a transaction subject to section 381, and the acquiring corporation is a dual resident corporation of the same foreign country of which the transferor dual resident corporation is a resident, or a domestic corporation that carries on the business activities of the transferor dual resident corporation as a separate unit, then income generated by the transferee dual resident corporation, or separate unit, may be offset by the carryover losses of the transferor dual resident corporation. In addition, if a domestic corporation transfers a separate unit to another domestic corporation in a transaction subject to section 381, the income generated by the separate unit following the transfer may be offset by the carryover losses of the separate unit.

(3) *Application of rules to multiple tiers of separate units.* If a separate unit of a domestic corporation is owned indirectly through another separate unit, the principles of paragraph (b) (1) and (2) of this section shall apply as if the upper-tier separate unit were a subsidiary of the domestic corporation and the lower-tier separate unit were a lower-tier subsidiary.

(4) *Examples.* The following examples illustrate the application of this paragraph (b).

EXAMPLE 1. P, a domestic corporation, owns all of the outstanding stock of DRC, a domestic corporation. P and DRC file a consolidated U.S. income tax return. DRC is managed and controlled in Country W, a country that determines the tax residence of corporations according to their place of management and control. Therefore, DRC is a dual resident corporation and any net operating loss it incurs is a dual consolidated loss. In Years 1 through 3, DRC incurs dual